

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) 3:13-CR-00276-B-7
)
SALVADOR MARTINEZ,)
)
Defendant.)

SENTENCING HEARING
BEFORE THE HONORABLE JANE J. BOYLE
UNITED STATES DISTRICT JUDGE
10-08-2020

A P P E A R A N C E S

For the Government:

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proceedings reported by mechanical stenography,
transcript produced by computer.

SHAWNIE ARCHULETA, CSR/CRR
FEDERAL COURT REPORTER - 214.753.2747

1 (In open court at 1:47 p.m.)

2 THE COURT: This is United States v.
3 Salvador Martinez, 3:13-CR-276.

4 Who is here for the government?

5 MR. LEAL: Good afternoon, Your Honor,
6 George Leal for the United States.

7 THE COURT: Who is here for the defendant?

8 MR. SIMMONS: Robert Simmons for Salvador
9 Martinez, Your Honor.

10 THE COURT: Okay. Please be seated for a
11 moment.

12 You need to stand up for just a minute,
13 Mr. Martinez, please.

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: I'm going to ask you a
16 question. Before I do, I'm going to place you under
17 oath. So raise your right hand as best you can.

18 (The Defendant was sworn.)

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Okay. Have you read
21 thoroughly through the presentence report, I mean
22 paragraph by paragraph, word by word with
23 Mr. Lehmann (sic) before today?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: You understand what's in the

1 PSR?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Any questions about it?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: All right. I have the
6 Government's Response to the PSR, which is -- they
7 accepted on Document 427.

8 I have the objections to the PSR in
9 Document 437. It's pretty lengthy.

10 Have you been through this motion, these
11 objections, thoroughly and looked over them
12 thoroughly with your attorney?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Before today?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Any questions about them?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: Okay. I have an addendum to
19 the PSR, Document 442-1.

20 Have you read over that with Mister --
21 with him very carefully?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Okay. Do you understand them?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Do you have any questions

1 about them?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: All right. Okay. Then I have
4 Order of Conviction -- I'm not sure why this is in
5 here -- but of Jorge Solis. Have you seen this?
6 Okay. I don't think it's part of the presentence
7 papers.

8 Then I have the second addendum, Document
9 760-1.

10 Have you read over that very carefully
11 with your attorney, Mr. Lehmann?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: All right. Do you have any
14 questions about it?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: Do you understand it?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Then I have your attorney's
19 Supplemental Objections to the Presentence
20 Investigation, and that's Document 766.

21 Have you read over that with him very
22 carefully?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: All right. And then next I
25 have a very lengthy document, Document 767. It's

1 the Government's Response to the Defendant's
2 Objections to the Presentence Report.

3 Have you read that over very carefully --

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: -- very carefully with your
6 attorney?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Are you sure?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Do you understand it?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: All right. The government's
13 downward departure -- which is 768, and it's a
14 pretty lengthy document -- have you had a chance to
15 read over the 5K, the Motion for Downward Departure
16 with your attorney?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Any questions about it?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: Let's hear your objection.
21 You can be seated.

22 Mr. Lehmann, I would like you to stand.

23 MR. SIMMONS: Your Honor, we're the second
24 attorney. Mr. Lehmann was appointed on it prior to.

25 THE COURT: I'm sorry. I'm sorry.

1 You're who?

2 MR. SIMMONS: I'm Robert Simmons. I
3 wanted to make sure the record is clear.

4 THE COURT: I'm very sorry I got your name
5 wrong. I have it right up here. My fault. Go
6 ahead.

7 MR. SIMMONS: So there was Mr. Lehmann
8 before who did the previous objections, and we did
9 the supplemental objections.

10 THE COURT: I see. So are you relying on
11 his objections or yours?

12 MR. SIMMONS: Ours plus the supplement,
13 yes.

14 THE COURT: Okay. Okay. Go ahead.

15 MR. SIMMONS: The previous objections that
16 had been filed, the first one is dealing with the
17 quantity amounts of the drugs, which it doesn't
18 change the range of the -- and where the level
19 falls, although it may come into play in terms of
20 where you would like to sentence in that range in
21 the case, Your Honor, so it doesn't change the
22 actual level where he's being placed.

23 The second objection is --

24 THE COURT: Let's go through that. What
25 are you objecting to?

1 MR. SIMMONS: The objection was they
2 attributed 453.6 grams of high purity
3 methamphetamine to Mr. Martinez. And what
4 Mr. Lehmann was arguing is the second part of that
5 was by -- let's see. Let me look at this real
6 quick.

7 The 283.5 grams that we had been dealing
8 with between Cisneros and Keester were these other
9 codefendants. I'm not sure he had knowledge of that
10 or what he was even involved in. There were no
11 facts to support the direct relationship or had
12 taken care of those drugs --

13 THE COURT: Mr. Cisneros and who?

14 MR. SIMMONS: A guy named Keester.

15 THE COURT: Um-hum.

16 MR. SIMMONS: And he was arguing about
17 taking out the 283.5 grams -- I guess the relevant
18 conduct -- that it wasn't reasonably foreseeable for
19 Martinez to know about this 283.5 grams of
20 methamphetamine between the codefendant, Cisneros,
21 and this individual named Keester, and that's what
22 the objection was. But it doesn't change the actual
23 level where he's being placed.

24 THE COURT: All right. Mr. Leal.

25 MR. LEAL: Judge, just in response, the

1 government did address that objection in its
2 response. And certainly the case agent is here if
3 the Court would like to hear from him.

4 THE COURT: Go ahead.

5 MR. LEAL: Okay. As far as the
6 government's opinion, Your Honor, the government
7 believes that it is appropriate to hold him
8 responsible for that 453.6 grams.

9 In the government's response to the
10 objections, the government included Government's
11 Exhibit Number 1, which is a transcript that falls
12 between the defendant and Tatuado, which happens to
13 be Mr. Cisneros, Your Honor. And in that, they do
14 use coded language in there. The initial call is
15 that Tatuado, Mr. Cisneros, tells the defendant,
16 "Hey, the guys called, and they said they needed
17 another one."

18 THE COURT: Okay. Mr. Leal, is this
19 dealing with the same drug transaction that he's
20 being held liable here for in the presentence
21 report?

22 MR. LEAL: Yes, Your Honor.

23 THE COURT: Okay. Okay.

24 MR. LEAL: Which my understanding is it's
25 the defendant's objection to paragraph 16.

1 THE COURT: Sixteen, all right.

2 MR. LEAL: And in that, it should be noted
3 that case agents determined in this particular case
4 that "a whole one" referred to a pound, usually
5 refers to kilogram, but whatever the investigating
6 agent determined in this particular case, it
7 referred to a pound in his opinion. So that's what
8 we've gone off of.

9 Subsequently, the conversation talks about
10 and demonstrates how they're working together.

11 Cisneros tells the defendant, "Hold them
12 off until Monday. Tomorrow night we will pull it
13 out and give it to them Monday morning."

14 THE COURT: Okay. You've given me enough.
15 I think I'm going to overrule the objection.

16 So his objection is that Cisneros and
17 Keester were doing things that this guy didn't know
18 about. You say he knew about it, because you've got
19 a transcript of them talking about it.

20 MR. LEAL: Well, they've got a transcript
21 of them working out together, Mr. Cisneros and Saul,
22 and I believe it's reasonably foreseeable that he
23 would know that the methamphetamine is being
24 distributed to other people.

25 THE COURT: All right. I'm going to

1 overrule the objection. And you have a very, very
2 good response. It's very thorough, and I think I'm
3 going to rely on that.

4 Is there anything else that you have?

5 MR. LEAL: No, Your Honor. There are some
6 other objections.

7 THE COURT: Oh, no, we're going to go to
8 the next objection.

9 MR. LEAL: Yes, Your Honor.

10 THE COURT: Overrule the objection.
11 Objection to paragraph 20.

12 MR. SIMMONS: Yeah, this is dealing with
13 the second objection that Mr. Lehmann had filed,
14 which was a mitigating role.

15 And what Lehmann had kind of laid out is
16 whether it's a four or two. It doesn't look like he
17 made an argument for a four-level or two-level or
18 three-level, he just wanted it to apply, is what it
19 looks like to me, Your Honor.

20 And he lays out on page 5 of the
21 objection, the actual overt acts of Mr. Cisneros and
22 him overseeing Martinez as basically an errand boy.

23 You have Cisneros instructing Martinez to
24 lease the garage. And then you have him directing
25 Martinez to pick up some methamphetamine, that was

1 back in May of 2013; and then instructing
2 Mr. Martinez how to package and deliver the
3 methamphetamine; and July 12th, picking up some; in
4 August, picking up a package and then taking care of
5 it at the garage in August.

6 Those are the roles that Mr. Martinez
7 played in this grand conspiracy, as you can tell.
8 And Mr. Lehmann played it out as him being less
9 culpable than the other participants inside of this
10 conspiracy as a runner or an errand boy.

11 He also laid out kind of the history and a
12 little bit of context of the sentencing guidelines
13 and how they've changed over the years and how it's
14 been so really restrictive or conservative in use of
15 minimal participants. It's taken out the language
16 that -- that would require the Court to use it
17 infrequently, and I think that was done back in
18 2019. I think that's on page 12 of the objection.
19 And the Comment Section of the sentencing guidelines
20 took out the old language, "It is intended for the
21 downward adjustment for a minimal participant will
22 be used infrequently."

23 So what he was saying in this case, based
24 upon his actions and his role involved in this
25 conspiracy, he should be considered a minimal

1 participant and get some points off his sentence
2 based upon his actions and apply it -- it applies to
3 him, and it should be more liberally applied than it
4 used to be so restrictively applied in the past
5 history.

6 THE COURT: Okay. Mr. Leal.

7 MR. LEAL: Judge, I think there's just two
8 objections I want to be sure to address. First off,
9 I want to go back to that objection in paragraph 20,
10 where the defendant was complaining to being held
11 accountable for 283.5 grams of methamphetamine.
12 That's actually the Keester transaction.

13 And in that, I would note that in calls
14 between the defendant and Mr. Cisneros, they're
15 actually talking about the amount of
16 methamphetamine. Mr. Cisneros actually tells him
17 the amount came out to be "268," which is 268 grams.

18 THE COURT: For that deal.

19 MR. LEAL: Yes, Your Honor.

20 THE COURT: All right.

21 MR. LEAL: And then another call summary
22 reveals that Mr. Cisneros wonders what happened to
23 the original weight, because it was 336, and that's
24 in Government's Exhibit Number 3, which is attached
25 to the Government's Response to the Defendant's

1 Objections.

2 And the defendant tells Mr. Cisneros that
3 he had told him it was 12 ounces but that he would
4 take it. And then the defendant tells him -- or
5 Mr. Cisneros tells him, "It's almost ten, just tell
6 him to pay for those," and that's what they agree
7 upon, to sell that for \$3,900. So I would argue
8 that that objection with regards to Keester in
9 paragraph 20 should be overruled.

10 As far as the mitigating role, this
11 defendant -- there's no question that this defendant
12 was less involved. He was beneath Mr. Cisneros.
13 But as far as a mitigating role, the government
14 would argue that the evidence doesn't support that.
15 He scored as a zero, which is role-neutral. And the
16 government would argue that that's actually pretty
17 conservative.

18 In the government's response and in
19 exhibits that have been submitted to the Court, the
20 government would note that in Government's Exhibit
21 Number 1, there's a statement on page 335 of that
22 exhibit, when Mr. Cisneros says that he wants the,
23 quote, shit, to be badass. And again, case agents
24 determined that that was referring to
25 methamphetamine.

1 The defendant said, "Yeah."

2 And then when Mr. Cisneros complains about
3 working by himself and needing the help of the
4 defendant, the defendant tells Mr. Cisneros, "Nah, I
5 got you, Dude. That we need to get, we need to do
6 that. I got you."

7 So clearly they're working together. And
8 while he may be a junior partner, he is working with
9 him nonetheless.

10 Government's Exhibit Number 2 also reveals
11 they worked together. Again, they are talking about
12 weight of the methamphetamine. And then they
13 ultimately agreed to sell that methamphetamine.

14 Again, the government argues he's trusted
15 in this organization. He's a cook in the
16 organization. I think the exhibits that were
17 submitted to the Court reveal that, as well, Your
18 Honor.

19 So the government would argue that, based
20 upon the PSR and the reports and information that's
21 been submitted to the Court, the government would
22 argue that the defendant is conservatively scored
23 properly at a zero, which is role-neutral.

24 THE COURT: All right.

25 Mr. Simmons.

1 MR. SIMMONS: Yes, Your Honor.

2 THE COURT: What else did you have?

3 MR. SIMMONS: The third objection, Your
4 Honor.

5 THE COURT: No, no, to that objection.

6 MR. SIMMONS: Oh, to that objection.

7 Your Honor, I think it applies to this
8 case in terms of his -- if you look at the overall
9 conspiracy and you look at his role in it,
10 especially page 5 of the objections that were filed
11 by Mr. Lehmann, those things there show a short
12 period of time between May and August and him
13 being -- they don't really address it, but him being
14 basically a goat, a donkey, a mule or an errand boy
15 for Cisneros and all his other cronies that he is
16 delivering to, and he is not that involved in this
17 conspiracy compared to the overall conspiracy. And
18 at least -- at least this Court should consider
19 maybe making him a minimal or even a minor, maybe
20 two or three points in this case; probably not a
21 four, but maybe a two or three.

22 THE COURT: Okay. Thank you.

23 I think that the evidence is clear that he
24 is not a minor or minimal participant. It's all set
25 forth in the presentence report, which I have

1 adopted and accepted. And the government has
2 thoroughly refuted the allegation with facts, and we
3 have no facts from you that he was minimal or minor
4 participant. So for that reason, I overrule the
5 objection.

6 What else did you have?

7 MR. SIMMONS: Your Honor, Objection
8 Number 3 was a supplemental objection, and it is
9 basically an equitable argument on the application
10 of comparing methamphetamine versus -- actual versus
11 mixture, and I think you heard that in the last
12 sentencing.

13 THE COURT: Yeah, go ahead, but I can't do
14 anything about it. Go ahead.

15 MR. SIMMONS: And that's why we are also
16 reserving the right in case --

17 THE COURT: Yeah, absolutely.

18 MR. SIMMONS: -- in case the Sentencing
19 Commission or 5th Circuit or somebody else makes
20 case law to change that.

21 THE COURT: I hope they don't, because I
22 have been relying on them for so long for them to
23 tell me the right thing. I would hate to be
24 mistaken and have to go back, but anyway.

25 MR. SIMMONS: And it's a fair and

1 equitable argument applied to all the defendants.
2 And it really kind of depends on whether the
3 government tests it or doesn't test it, whether --
4 whether they admit to it or one part of a drug is
5 being found actual methamphetamine and pure versus
6 ghost dope that hasn't been tested. And you've got
7 this disparity that --

8 THE COURT: I agree with you.

9 MR. SIMMONS: -- defendants between -- in
10 not only one conspiracy, but when you apply the
11 sentencing guidelines overall broad spectrum to drug
12 cases, then you have a disparity in sentences based
13 upon who did what and whether they tested or not.

14 And on our end of it, we should be given
15 the benefit of the doubt. And that's why I think
16 the guidelines are really trying to prevent that
17 from happening. That's why they adopted them back
18 in 1985, was to get rid of the disparity between
19 defendants. And we're asking to apply it as an
20 equitable argument in this case, Your Honor.

21 THE COURT: Okay. Overrule the objection.
22 Is that all the objections, Mr. Simmons?

23 MR. SIMMONS: Yes, it is, Your Honor.

24 THE COURT: Overrule all of the
25 objections.

1 I now adopt the Presentence Report,
2 Addendum Number 1, and Addendum Number 2 as the
3 findings and conclusions of the Court, with an
4 offense level 40, a criminal history category I, and
5 292 to 365 months.

6 Right, Mr. Leal?

7 MR. LEAL: That's correct, Your Honor.

8 THE COURT: Right, Mr. Simmons?

9 MR. SIMMONS: I believe that's correct,
10 Your Honor.

11 THE COURT: All right. Mr. Simmons, go
12 ahead.

13 MR. SIMMONS: Before we get started, Your
14 Honor, just a proffer real quick. He has his family
15 here, and they are in the back.

16 THE COURT: He has what?

17 MR. SIMMONS: Family.

18 THE COURT: All right. Go ahead and stand
19 up, please. All right. All right. Thank you very,
20 very much for coming. I appreciate it, and it means
21 a lot to me that you are here. Okay. Thank you.

22 MR. SIMMONS: He has his mother here, his
23 sister, his brother, and his longtime friend that
24 he's known since like the fifth grade, Your Honor.

25 THE COURT: You know, he really messed up

1 when he left.

2 MR. SIMMONS: Oh, I know that, Your Honor.

3 THE COURT: That's the big thing here, but
4 go ahead.

5 MR. SIMMONS: And the interesting thing is
6 you mention that, because his mom -- we talked to
7 his mother. And the government was calling his
8 mother and saying, "Hey, listen we're looking for
9 your son." And she did not like the fact that he
10 took off. And she told the government where he was,
11 and they had to go get him in Mexico. And I know
12 that's the biggest problem in this case, Your Honor.
13 She wanted him picked up and was trying to help in
14 doing so. That just tells you the character of the
15 family.

16 THE COURT: I mean, he has no prior
17 criminal record.

18 MR. SIMMONS: He's got one point, Your
19 Honor.

20 THE COURT: Yeah, it's ridiculous that he
21 left. Where did he go, Mexico?

22 MR. SIMMONS: A very small town in Mexico.
23 And he's going to give you that explanation when he
24 gives his statement. But basically, Your Honor, he
25 heard large numbers after he cooperated, after he

1 entered a plea. Then he was hearing 20 years, and
2 he basically freaked out.

3 He was in his early 20s. And the elevator
4 usually doesn't go up all the way, because sometimes
5 us 20-year-olds act like teenage boys, as I have a
6 son. And I still ask him today, "Hey, why did you
7 do that?" "I don't know."

8 Sometimes the synopsis just don't quite
9 connect and you make a bad decision, and then you're
10 too deep to make a decision to undo it.

11 THE COURT: This was a really bad one.

12 MR. SIMMONS: Absolutely, Your Honor.

13 THE COURT: Go ahead.

14 MR. SIMMONS: So he has a sister here
15 who -- he said something very touching to me. He
16 said, "She's my best friend." And I have a son and
17 a daughter, and I'm not sure I could say that about
18 my son and daughter, that they're best friends.

19 THE COURT: How old are they? How old are
20 your son and daughter?

21 MR. SIMMONS: Oh, they are 24 and 25.

22 THE COURT: Okay. They'll get better.

23 MR. SIMMONS: Yeah. They're still night
24 and day. It's just water in the mix.

25 These two, his sister and him, they are

1 really tight. When he said, "She's my best friend,"
2 it was -- it meant a lot. And when I talked to her
3 about it, she said, "Yeah, he's my best friend," and
4 she got a little teary-eyed.

5 He knows who is important in his life, and
6 they are here to support him. And I talked to him
7 about it, too, and he mentioned it to me, "Hey,
8 where are my friends?" He really don't have any,
9 other than his close family that is here when he got
10 involved in this thing.

11 His wife is in Mexico, that's where she
12 is. They got married while he was down there. He
13 has a child from another relationship here in the
14 United States who is 8 years old. That's kind of
15 breaking his heart because of all this.

16 THE COURT: Um-hum.

17 MR. SIMMONS: And they would support that
18 and his character and what kind of man he is and
19 what kind of character Mr. Martinez is to his
20 friends and his family.

21 And then I would like to move right into,
22 I guess, an argument now, Your Honor.

23 THE COURT: Go ahead, yes. Yes.

24 MR. SIMMONS: In this case, Your Honor,
25 we're trying to be creative here, because this is

1 the problem. You got a guy who enters his plea of
2 guilty and then absconds from this Court and is gone
3 for about five and a half years.

4 THE COURT: More.

5 MR. SIMMONS: Yeah, 66 months or so.

6 We look at his previous presentence
7 report. The base offense level at that time would
8 have been a level 36. But because of the new
9 guideline ranges with the drug calculations, I think
10 it's now a 34. So it was 34 then and now.

11 He got two points for importation and two
12 points for a gun. Then he got acceptance of
13 responsibility. And then if you add in the
14 government's downward departure, minus one. Now, he
15 might have gotten more. If he had stayed around,
16 maybe he would have cooperated, maybe he could have
17 done more to help himself.

18 THE COURT: Well, yes, if he helped
19 himself -- did he cooperate with the government at
20 all?

21 MR. LEAL: Yes, Your Honor, the government
22 did file a --

23 THE COURT: Oh, I got it, yeah.

24 MR. SIMMONS: So at this point he gets one
25 point. He may have gotten more later. So that puts

1 him basically at a level 34 with a range of 151 to
2 188. That's what it would have been before he took
3 off.

4 Now, with a level 34 and all those points
5 and then add in obstruction and then take away
6 acceptance of responsibility, he's at a level 39.

7 So what do we do with that? I think, even
8 if you take the level as it is, that's enough
9 punishment, because he's getting a five-point swing,
10 three points for acceptance of responsibility, plus
11 two points for obstruction, which changes the
12 guideline range. The goal of the prosecutor in this
13 case for him absconding and giving him only one
14 point really is to try to punish him, especially
15 when they're arguing for 300 months.

16 THE COURT: And he's not even from Mexico.

17 MR. SIMMONS: No, he's from here in the
18 United States. Yes, Your Honor, you're right.

19 I think the creative way to do it is the
20 66 months, the five and a half years that he's been
21 gone, add it to his sentence of what he normally
22 would have gotten, and he would have been at a low
23 level of 151 or a high end of 188. That range of
24 punishment would have been 217 to 254.

25 Now, what also this Court can do, too, is

1 compare the sentences of the other codefendants in
2 this case. Now, I know the factors are different,
3 because he absconded versus somebody else who
4 didn't. However, the lead guy in this case, who was
5 instructing him to do what he did, he's a lot less
6 culpable, as you heard from the government in our
7 argument for a mitigating role, and it makes sense
8 to not punish him more than the leader.

9 THE COURT: What did the leader get?

10 MR. SIMMONS: He got like 20 years, I
11 believe, Cisneros.

12 THE COURT: Oh, he got -- Cisneros got a
13 life sentence.

14 MR. LEAL: Oh, no, Judge. He was
15 sentenced at 240 months.

16 THE COURT: Oh, yes. I'm sorry. Yes, he
17 did. Okay.

18 MR. SIMMONS: And Mr. Martinez did what he
19 could at the time before he took off and cooperated.

20 And this kind of case doesn't call for
21 somebody to get a 300-month sentence based upon his
22 history and the factors of the sentencing
23 guidelines.

24 And the other thing, too, Your Honor, I
25 don't know how much government resources were

1 expended to go and get the warrant, use
2 international law, apply for the Mexican government
3 to help them get Mr. Martinez here. I know that
4 took a lot of manpower, a lot of resources. That's
5 something the Court could order on restitution. I
6 don't know the number, but he's willing to pay that.

7 THE COURT: Okay.

8 MR. SIMMONS: The goal of sentencing is to
9 create a sentence that's not greater than necessary
10 to achieve deterrence, rehabilitation or retribution
11 or punishment. And in this case, I think that 217
12 months is more than enough to reach the goal of the
13 sentence. The government was suggesting 300, with a
14 downward departure and a one point off. I think it
15 would achieve the goals that this Court is seeking.
16 You've got this man's attention, and the family
17 would support that, too, Your Honor.

18 THE COURT: Okay. Mr. Martinez, stand up,
19 please. Let's hear from you.

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Go ahead. What do you want to
22 say?

23 THE DEFENDANT: Your Honor, just to shed
24 some light on --

25 THE COURT: Be sure to speak into the

1 microphone. Okay.

2 THE DEFENDANT: Just to shed some light on
3 what I did back in 2014, it wasn't more of the fact
4 to mock the system, it was more of the fact that I
5 felt like I had to run for my life, if you will.

6 THE COURT: I mean, you've got to stand up
7 and face the music is what you should have done.

8 THE DEFENDANT: Oh, yes, ma'am. And I'm
9 here facing the music, and I accept my
10 responsibility and my wrongdoings. I'm just
11 explaining why I did and what I did wasn't to mock
12 the system, it was more of the fact my previous
13 attorney had asked me to do certain things. And one
14 of the things was to debrief with Mr. Leal and his
15 team, which I did so twice.

16 And throughout my house confinement on the
17 PR bond, two different occasions I received two
18 different messages from two different people, one of
19 them being a death threat. The death threat, one
20 was about a month before I did what I did. And a
21 week after that is when I -- I personally had to
22 call my lawyer to see where we were at on the
23 sentencing court date is when he broke the news to
24 me that things went haywire and I was looking at the
25 time that I was looking at.

1 So, again, I felt like my walls were
2 closing. And it was more the heat of the moment I
3 did what I did, which later I would tell myself it
4 was more of a coward move. Given the chance to do
5 it again, I wouldn't. And fast-forward me to now in
6 Mexico. As you know, Mexico is a harsh place.

7 THE COURT: Why did you go to Mexico? Did
8 you enjoy it there?

9 THE DEFENDANT: No, ma'am. Again, it
10 was -- I couldn't run. I couldn't do what I did and
11 stay in the United States, Your Honor. And the
12 God-honest truth, my father has been there since
13 2004. He was actually deported back in 2004 or
14 2005, and he's been there ever since. So I ran to
15 him. That's the truth. I ran to him because I felt
16 like my walls were closing in.

17 And, again, being in that type of
18 environment, I had to push myself to become a much
19 stronger, much wiser, mature person, which I
20 personally believe that I achieved within the years
21 that I was there. My work ethic grew. I pushed
22 myself through obstacles that I didn't think I could
23 achieve.

24 And throughout the process, I met my wife.
25 She actually took me by the hand of marriage this

1 past March. And I've always painted her the
2 picture -- perfect picture of what life would be
3 like back in the States. So, again, me, throughout
4 the years becoming more wiser, more mature, I
5 finally asked my sister to help me out in getting me
6 an attorney to do the right thing and turn myself
7 in.

8 THE COURT: Well, thank you to your
9 family --

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: -- for encouraging you.

12 Is there anything else that you have to
13 say? I was going to talk to Mr. Leal.

14 THE DEFENDANT: I would hope that you give
15 me a second chance and to prove myself to you, to
16 the court, to my family, give me a second
17 opportunity, an opportunity that I won't fail at.
18 I've been without my daughter for -- I left her when
19 she was a year-and-a-half years old, and that's why
20 I used the word "coward," because that's what I
21 felt.

22 THE COURT: It was. It was. Okay.

23 Let me hear from Mr. Leal.

24 Is there anything else you wanted to say?

25 THE DEFENDANT: No, ma'am.

1 THE COURT: Mr. Leal?

2 MR. LEAL: Just very briefly, I would like
3 to call Deputy U.S. Marshal Daryl Wieland.

4 He's the Marshal that actually tracked the
5 defendant down in Mexico.

6 THE COURT: Would you raise your right
7 hand, please?

8 (Witness sworn in.)

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: How about if you come over to
11 the lecturn -- oh, we have mics right there. And
12 you can hold it up to you or sit down.

13 Good, good, good. All right. Go ahead.

14 **DEPUTY U.S. MARSHAL DARYL WIELAND,**
15 **having been first duly sworn, testified as follows:**

16 **DIRECT EXAMINATION**

17 **BY MR. LEAL:**

18 Q. And Deputy U.S. Marshal Wieland, would you
19 state your name for the record, please?

20 A. Daryl Wieland.

21 Q. And where do you work?

22 A. I'm a Deputy United States Marshal, Northern
23 District of Texas, Fort Worth Division.

24 Q. How long have you worked for the U.S. Marshal
25 Service?

1 A. 17-and-a-half years.

2 Q. And in your work with the Marshal Service, have
3 you had occasion to be assigned to a section in the
4 Marshal Service where you track down fugitives?

5 A. Yes.

6 Q. And how long have you been assigned there?

7 A. It's -- really we just get assigned cases and
8 just work them.

9 Q. Okay. I want to turn your attention to a
10 person by the name of Salvador Martinez.

11 Are you familiar with a case that relates to
12 that particular person?

13 A. Yes, I am.

14 Q. And do you see that person seated in the
15 courtroom here today?

16 A. Yes, sir, I do.

17 Q. Can you tell the Court where he's sitting down
18 or standing?

19 A. He's seated at the defense table next to his
20 defense attorney in a gray-and-black striped
21 jumpsuit.

22 MR. LEAL: Your Honor, may the record
23 reflect that the witness has identified the
24 defendant?

25 THE COURT: It will so reflect.

1 Q. (By Mr. Leal) In regards to Salvador Martinez,
2 also known as Saul, would you just very briefly tell
3 the Court what efforts you went to to locate the
4 defendant.

5 A. Well, I received the warrant back in 2014. I
6 started trying to locate through family members,
7 through interviews, numerous interviews,
8 surveillance, social media, and just throughout the
9 years tried to locate the individual through social
10 media and interviews and follow-ups with certain
11 family members.

12 Q. Now, when you talked to family members, what
13 was the response you got from family members?

14 A. Initially, one of the first -- first two
15 interviews, not really cooperative. I found some
16 not telling the truth. Later throughout the
17 investigation, they started talking a little bit
18 more kind of about the whereabouts, but never really
19 proactive. I would have to try to reach out to
20 them, and there were lengthy periods of time where
21 there was no communication.

22 Q. All right. At some point in time, did you
23 contact his mother?

24 A. Yes. She was actually one of the first
25 interviews that I had.

1 Q. Okay. And did you tell her that she needed to
2 tell him to turn himself in?

3 A. Yes. I told her that it would be the safest
4 way possible.

5 Q. Okay. And did he ever turn himself in?

6 A. He did not.

7 Q. And did -- did family members specifically tell
8 you where he was in Mexico?

9 A. They mentioned an area. It was mentioned that
10 he was living with his father. I didn't have all of
11 the identifiers or an exact location. And then
12 there was also an address that was provided to me
13 that we had our Marshal Service in Mexico City and
14 Mexican officials go check out, and I was told that
15 that residence was abandoned, there was nobody at
16 that residence.

17 Q. Okay. At some point in time, did you send the
18 government photographs of the defendant? And do you
19 have those with you here today?

20 A. Yes, I did, and yes, I do have them.

21 Q. Okay. And those were actually submitted as an
22 exhibit in the Government's 5K motion. They are
23 marked as Government's Exhibit Number 3.

24 MR. LEAL: I tender that copy to defense
25 counsel, and then I can tender a hard copy to the

1 Court, Your Honor. I think the Court has the
2 government's motion and the exhibits.

3 THE COURT: If it's in the motion, I have
4 it.

5 MR. LEAL: All right.

6 Q. (By Mr. Leal) And Deputy Marshal Wieland,
7 would you tell the Court what it is we're looking at
8 when we're looking at Government's Exhibit Number 3?

9 And if I first could get you to show the first
10 photograph to the Court.

11 Who is that?

12 A. It's the defendant, Salvador Martinez.

13 Q. And is that how he appeared when he was
14 extradited from Mexico to the United States?

15 A. Yes, sir. That should be exactly May 6th,
16 2020.

17 THE COURT: Excuse me. Sit six feet apart
18 from each other. Go ahead.

19 A. That should have been taken on the date of
20 May 6th, 2020, at the airport in Toluca, Mexico.

21 Q. (By Mr. Leal) Okay. Page 2 of 5 of that
22 particular exhibit, would you tell the Court what it
23 is we are looking at there?

24 A. Yes. That is a picture that I took of the
25 defendant's wrist, just tattoos for record, and the

1 restraints that were placed on his wrists and the
2 belly chain.

3 Q. Okay. And is that something that you used to
4 help identify him?

5 A. Yes, it was.

6 Q. Okay. Page 3 of 5 of that particular exhibit,
7 would you tell the Court what it is we're looking at
8 there?

9 A. This is social media of one of his family
10 members in which I was able to identify Salvador
11 Martinez. I was also able to identify a family
12 member from here that it was his profile picture.
13 And it was when he went to go visit Salvador
14 Martinez and from the five years of --

15 THE COURT: Went to go visit him where?

16 THE WITNESS: In Mexico, Your Honor.

17 THE COURT: All right.

18 THE WITNESS: And I recognized the little
19 boy in the picture as being the half-brother -- I
20 believe it's the half-brother of Salvador Martinez,
21 Antonio Martinez, and --

22 THE COURT: When was this picture taken?

23 THE WITNESS: Your Honor, I believe this
24 picture was taken -- it's time-stamped from when
25 whoever posted it. But I believe this one, if I

1 recall correctly, was September of last year.

2 THE COURT: Before he was arrested?

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: All right.

5 Q. (By Mr. Leal) And Government's Exhibit Number
6 3, page 4 of 5, would you tell the Court what it is
7 we are looking at in that particular photograph?

8 A. This is a family reunion. I'm not sure the
9 name of the actual family that was holding the
10 reunion. But it has relatives. And from left to
11 right it's Salvador, his father, stepmother,
12 brother, half-brother, and then his -- I think I
13 just wrote his father's name down underneath there.

14 Q. And this photograph, was it taken in Mexico?

15 A. Yes, it was.

16 Q. During the last few years that he's been an
17 absconder?

18 A. Yes, sir.

19 Q. And then page 5 of 5 of Government's Exhibit
20 Number 3, that's another photograph.

21 Would you tell the Court what it is we're
22 looking at there?

23 A. It looks like it's part of the same family
24 reunion and a reception or dinner or lunch that they
25 are having.

1 Q. Okay. And there's writing on all these
2 photographs. Is that your handwriting?

3 A. Yes, it is.

4 Q. Okay. In regards to these particular
5 photographs, you said that you found one in 2019.
6 That may not be the date that it was taken, but
7 definitely you found one.

8 So clearly, in your opinion, did his family
9 know he was in Mexico, know where he was in Mexico
10 and probably could have brought him over if they
11 wanted to?

12 A. Definitely from these picture I know at least
13 one family member knew exactly where he was.

14 MR. LEAL: Pass the witness, Your Honor.

15 THE COURT: Mr. Simmons.

16 **CROSS-EXAMINATION**

17 **BY MR. SIMMONS:**

18 Q. Who was the family member who knew exactly
19 where he was?

20 A. That I believe knew exactly where he was?

21 Q. Yes.

22 A. His brother, Tony Martinez.

23 MR. SIMMONS: Pass the witness.

24 MR. LEAL: Nothing further, Your Honor.

25 THE COURT: Thank you. You are excused.

1 THE WITNESS: Okay.

2 THE COURT: Anything else from the
3 defense?

4 MR. SIMMONS: Nothing from the defense,
5 Your Honor.

6 THE COURT: Mr. Leal?

7 MR. LEAL: Judge, in regards to this
8 particular defendant, the government would argue
9 that a sentence of 300 months is appropriate. I
10 realize that that is more than Mr. Cisneros got. He
11 was the leader of the organization. He got 240
12 months. But I think the distinction -- and
13 certainly Mr. Simmons is correct, if everything had
14 turned out the way it was supposed to turn out and
15 the defendant had taken care of his business the way
16 the other defendants in this case did that took care
17 of their business and showed up for court and showed
18 up and took their punishment and didn't run, then
19 things would have worked out.

20 THE COURT: Did he cooperate with you
21 before he left?

22 MR. LEAL: He cooperated before he left.
23 As a matter of fact, he cooperated before the plea
24 agreement was filed, which is why I promised in the
25 plea agreement supplement that I would file a one

1 level 5K, at least based on his cooperation up to
2 the date of his plea. And so that's why I filed
3 that.

4 Subsequently -- I mean, he ran off, and so
5 there's not too much to do after somebody runs off.
6 And certainly there's not an opportunity for
7 continued cooperation.

8 It's interesting that the defendant states
9 that one of the reasons that he took off was because
10 he got a death threat. And I think he said he got a
11 death threat on his phone somewhere at the house or
12 a message related to a death threat. And certainly
13 the Court is familiar with everything that goes on
14 in the drug world. I know the Court is familiar
15 with the violence that's associated with the drug
16 world and particularly the violence that's
17 associated with the drug world in Mexico.

18 So after getting a death threat, I would
19 argue that the last thing somebody wants to do or
20 would want to do would be to go into the belly of
21 the beast, which is in Mexico where people are
22 getting killed in a drug war at a phenomenal rate,
23 astronomical rate. That's where he went. And
24 that's where he stayed for about five years until
25 the U.S. Marshals had to track him down.

1 Now, I had conversations with Mr. Simmons
2 and with Ms. Barbare right before the defendant got
3 arrested. And Ms. Barbare told me that he wanted to
4 turn himself in. And I think probably my response
5 to Ms. Barbare was, "Well, I will believe it when I
6 see it." Of course he didn't turn himself in, the
7 Marshals caught him -- or not the Marshals, but the
8 Mexico law enforcement officials caught him with the
9 assistance of the United States Marshals. And then
10 he was extradited to the United States from Mexico.

11 So while I understand 300 months is higher
12 than what Mr. Cisneros got, a sentence of 240
13 months, I will point out that the other defendants
14 that got lower sentences took care of business. And
15 there ought to be some consequence for not taking
16 care of business and for leaving and for making
17 people hunt you down and look for you and making
18 them extradite you from Mexico.

19 THE COURT: I agree.

20 MR. LEAL: And so the government would
21 argue that a sentence of 300 months, based on
22 everything, is appropriate, Your Honor.

23 THE COURT: Okay. Thank you.

24 Would you please stand up, Mr. Simmons,
25 Mr. Martinez?

1 Mr. Simmons, do you have anything else?

2 MR. SIMMONS: Yes, Your Honor, just for
3 record purposes. I think he would qualify for
4 treatment and make that recommendation and to -- he
5 mentioned del Reno. I'm not familiar with that
6 facility. He says it's about two hours away. We
7 would ask that that be made as part of the
8 recommendation.

9 THE COURT: You know, Mr. Martinez, I
10 would really like to help you. It sounds like you
11 would like to at least verbally want to turn your
12 life around. But it's hard to believe when you were
13 in Mexico -- that you left to Mexico and that you
14 stayed there for four or five years. And it looks
15 like at least, in part, your family was down there
16 visiting while you were on the run.

17 So I can't feel sorry for you. I don't
18 feel sorry for you. I'm glad you turned your life
19 around. At least you think you have, and I hope you
20 have, but it doesn't mitigate anything. It doesn't
21 mitigate anything. And by leaving, you put your
22 life in our hands, and I'm afraid that that has been
23 a bad result.

24 So for the safety of the community, for
25 the respect for the law, to promote respect for the

1 law, to provide just punishment, and for all the
2 other reasons of 3553 factors, I'm going to sentence
3 you to 300 months in custody.

4 It is five years supervised release, no
5 fine, no restitution, a 100-dollar mandatory special
6 assessment.

7 Pursuant to the Sentencing Reform Act of
8 1984, the defendant is committed to the custody of
9 the Federal Bureau of Prisons for a period of 300
10 months.

11 The defendant must be allowed to
12 participate in drug abuse -- substance abuse
13 treatment programs within the Federal Bureau of
14 Prisons if he's eligible.

15 It is ordered upon release from
16 imprisonment the defendant shall be placed on
17 supervised release for a period of five years.

18 It is further ordered that upon release
19 from imprisonment, the defendant shall comply with
20 the standard conditions contained in this judgment
21 and the mandatory conditions stated herein:

22 The defendant cannot commit another crime,
23 federal, state, or local.

24 He must not unlawfully possess a
25 controlled substance.

1 He must cooperate in the collection of DNA
2 as directed by probation.

3 He must refrain from any unlawful use of a
4 controlled substance.

5 The defendant must submit to one drug test
6 within 15 days of release from imprisonment and at
7 least two periodic drug tests thereafter as directed
8 by the Court.

9 The defendant shall participate in a
10 program approved by probation for treatment of
11 narcotic drug or alcohol dependency, which would
12 include testing for the detection of substance use
13 or abuse.

14 The defendant shall abstain from the use
15 of alcohol and/or all other intoxicants during and
16 after completion of treatment and contribute to the
17 costs of services rendered at \$10 per month.

18 The defendant shall provide probation any
19 requested financial information.

20 You can appeal this sentence,
21 Mr. Martinez, and you have two weeks from the date
22 of my judgment -- which will probably be tomorrow --
23 to file a notice of appeal. Please ask Mr. Simmons
24 to file an appeal for you if you want to.

25 Mr. Simmons, would you find out from him

1 if he wants to appeal and timely file the notice?

2 MR. SIMMONS: He has indicated to me that
3 he does want to appeal, Your Honor, and I believe he
4 would probably qualify for a court-appointed
5 attorney.

6 THE COURT: Okay. If you will tell us you
7 want to withdraw, we will look into that. He's got
8 to sign an IFP form and all that stuff.

9 MR. SIMMONS: Do I need to file a motion
10 or make that orally today?

11 THE COURT: Yeah, file a motion.

12 MR. SIMMONS: Okay.

13 THE COURT: And anything else from the
14 defense? What else did you ask for?

15 MR. SIMMONS: For record purposes, I want
16 to object to the reasonableness of the sentence for
17 appellate purposes.

18 THE COURT: I'm incorporating by reference
19 the provisions of AO 245B, 918 and -- or the edition
20 of U.S. Guideline Section 5D1.3(c).

21 Okay. Mr. Leal?

22 MR. LEAL: Your Honor, the government
23 moves to dismiss the remaining counts as to this
24 particular defendant.

25 THE COURT: As to this particular

1 defendant only, the remaining counts are ordered
2 dismissed.

3 And I will try El Reno if it's there.
4 Okay?

5 All right. We are going to remand the
6 defendant to federal custody and be in recess for
7 about five minutes.

8 (Court in recess at 2:32 p.m.)
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C E R T I F I C A T E

I, Shawnie Archuleta, CCR/CRR, certify
that the foregoing is a transcript from the record
of the proceedings in the foregoing entitled matter.

I further certify that the transcript fees
format comply with those prescribed by the Court and
the Judicial Conference of the United States.

This 12th day of November 2020.

s/Shawnie Archuleta
Shawnie Archuleta CCR No. 7533
Official Court Reporter
The Northern District of Texas
Dallas Division

My CSR license expires: December 31, 2020

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